

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOSHUA WILES,

Plaintiff,

-against-

THE CITY OF NEW YORK, a municipal entity, NEW YORK  
CITY POLICE OFFICER PASTULA, NEW YORK CITY  
POLICE LIEUTENANT ZIELINSKI, NEW YORK CITY  
POLICE SERGEANT JOHN SLAYNE, NEW YORK CITY  
POLICE OFFICER JOHN MCNAMARA and NEW YORK  
CITY POLICE OFFICERS "JOHN DOES 1-10."

Defendants.  
-----X

**DECLARATION OF**  
**ANDREW LUCAS IN**  
**SUPPORT OF DEFENDANTS'**  
**MOTION FOR SUMMARY**  
**JUDGMENT**

**13 CV 2898 (VSB) (HBP)**

**ANDREW LUCAS**, declares under penalty of perjury and pursuant to 28 U.S.C. §  
1746, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the Office of Zachary Carter, Corporation  
Counsel of the City of New York, attorney for defendants. As such, I am familiar with the  
facts stated below. I submit this declaration in support of defendants' motion for summary  
judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

2. Attached as Exhibit A is Plaintiff's verified notice of claim for his September 17,  
2012 arrest only.

3. Attached as Exhibit B is Plaintiff's hearing pursuant to G.M.L. 50-h held on January  
17, 2013. Therein plaintiff testifies, *inter alia*, that he was ordered to disperse from the  
intersection of Broadway and Wall on September 17, 2012, by police officers including  
Detective Pastula. In response he threw his arm up and exclaimed to nearby press, but  
remained "stationary or stagnant" until he was arrested. pp. 39-48.

4. Attached as Exhibit C is Plaintiff's initial complaint.

5. Attached as Exhibit D is the answer on behalf of the City and Officer Pastula.

6. Attached as Exhibit E is Plaintiff's second amended complaint.

7. Exhibit F is Plaintiff's deposition held on March 13, 2014. Therein Plaintiff testifies that he was arrested on November 5, 2011 when he ignored dispersal orders issued to the protestors spanning the extremely crowded sidewalk in front of 60 Centre Street and chose to sit down on the ground instead. pp. 53-58.

8. Exhibit G is video taken by Technical Assistance Response Unit (T.A.R.U.) Detective Morales on November 5, 2011. This video shows the protestors blocking the sidewalk in front of 60 Centre and protestors, including plaintiff, refusing to disperse while orders to leave are consistently read for over ten minutes. A still from that video shows plaintiff pushing into the orange mesh barricades while he records with his phone is attached.

9. Exhibit H is video from Youtube that depicts the protestors, including plaintiff, on the sidewalk in front of 60 Centre on November 5, 2011. This includes plaintiff being present for numerous dispersal orders, and video of Plaintiff responding to those requests by refusing to leave and sitting on the sidewalk. Attached stills from that video depict plaintiff reading the constitution to police, disregarding orders to disperse and ultimately sitting on the sidewalk waiting to be arrested.

10. Exhibit I includes three photos. The first photo shows 60 Centre Street from Foley Square on November 5, 2011 prior to plaintiff's arrest. It depicts the congested sidewalk and roadway. This photo was taken by a photographer who also captured plaintiff at that protest as seen in the second photo with his distinctive shirt, hat and sign. The third photo depicts plaintiff shortly before his arrest on November 5, 2011, seated alongside other protestors on

the sidewalk in front of 60 Centre Street, refusing continued requests by the police to disperse and apparently sending messages on his phone.

11. Exhibit J is the deposition transcript of Officer McNamara who arrested Plaintiff on November 5, 2011.

12. Exhibit K is excerpts from the deposition of Chief Anger, the ranking officer at the November 5, 2011 incident. He testifies regarding the protestors blocking the sidewalk in front of 60 Centre Street, the orders to disperse, and plaintiff's own conduct leading to his arrest.

13. Exhibit L is excerpts from the deposition of Lieutenant Zielinski. Lieutenant Zielinski issued numerous orders to disperse after the protestors blocked the sidewalk in front of 60 Centre Street on November 5, 2011.

14. Exhibit M is the memo book of Police Officer Pastula wherein he details, as plaintiff describes in his testimony, that Plaintiff was given an order to disperse and move along from Broadway and Wall Street on September 17, 2012. Instead Plaintiff remained in the vicinity of the employee entrance to Wall Street and chanted with other protestors that it was the protestors' sidewalk until he was arrested.

15. Exhibit N is video taken by T.A.R.U. Detective Ellis. Therein Plaintiff can be seen and heard leading a chant of "Who's Sidewalk?" "Our sidewalk!" with other protestors after he had been warned by Detective Pastula leading up to his arrest. Stills from that video are attached. The first shows plaintiff with his hand cupped to his mouth chanting "Who's Sidewalk" at approximately 1:31. The second shows plaintiff at approximately 1:42, when he is placed under arrest. Plaintiff has been circled for identification in both stills.

16. Exhibit O is video taken by T.A.R.U. Detective Cruz. Therein Plaintiff can be seen immediately after he is ordered to disperse by Detective Pastula when he throws his arm up in the air for the benefit of the press, as he testified in Exhibit B, 45: 19 – 46: 12 and Exhibit F, 81: 23 – 82: 4. A still depicting plaintiff with his arm up at 03:37 is attached and plaintiff is circled for identification. Plaintiff testified he was arrested less than one minute later, Exhibit B, 50: 5-21; F 83: 13-21. This video also depicts that arrest in the same location at approximately 04:30. As plaintiff testified he threw his arm up after being ordered to disperse, this demonstrates that plaintiff refused to disperse and was arrested after an ample opportunity to comply was apparently refused.

17. Attached as Exhibit P is excerpts of the deposition of Officer Pastula. Officer Pastula testified that Plaintiff refused to disperse after being given an order to disperse and opportunity to leave. Officer Pastula decided to arrest Plaintiff when he instead remained at the employee entrance to Wall Street leading chants of “Who’s Sidewalk?”

18. Attached as Exhibit Q are the planned events by various groups affiliated with the Occupy Wall Street Movement for September 17, 2012. They state that they are seeking to, *inter alia*, “Disrupt Wall Street... with non-violent civil disobedience,” “assemble in the streets surrounding the New York Stock Exchange in a historic act of nonviolent civil disobedience,” and “disrupt traffic throughout the Financial District by creating... intersection occupations surrounding the Stock Exchange.”

19. Attached as Exhibit R is the Police Department Detail for September 17, 2012, which quotes the names and the planned activities in Exhibit Q including the “roving intersection occupations.”

20. Exhibit S are four letters to plaintiff from the Department of Education warning him that he would be terminated if he did not satisfy his licensing requirements, culminating in the letter terminating him effective July 1, 2012.

21. Exhibit T is an affidavit from another arrestee at the November 5, 2011 incident where she details that she requested Plaintiff's handcuffs be replaced, and they were.

22. Exhibit U is the decline to prosecute letters and desk appearance ticket related to Plaintiff's November 5, 2011 arrest.

23. Exhibit T is the decline to prosecute letters and desk appearance ticket related to Plaintiff's September 17, 2012 arrest.

24. Exhibit W are the letters from the Department of Education Department of Investigation rescinding and restoring Plaintiff's eligibility to work as a per diem substitute teacher in November 2012 and January 2013 respectively.

25. Exhibit X is the Substitute Teacher Pre-Employment Agreement executed by Plaintiff.

26. Exhibit Y is a copy of Chancellor's Regulation C-105.

27. Exhibit Z is social media and electronic discovery from plaintiff, including a Facebook post where he admits he disobeyed the police orders. It also includes Gmail exchanges where plaintiff admits he does not think he can sue for the first arrest because "i sat down the first time," and that he intended to be arrested on November 5, 2011, stating in regards to his September 17, 2012 arrest "I really was trying not to this time," "... I really didn't look for that one," and "I really didn't ask for this [9/17/12] arrest at all [].".

28. Exhibit AA is the deposition transcript of Chief McNamara. Chief McNamara testifies regarding the plan by Occupy protestors to blockade lower Manhattan and Wall

Street. He also testified about the response by the police, including the pedestrian access point at Wall Street and Broadway that plaintiff attempted to claim for the demonstrators when he led a chant of “Whose sidewalk?!” “Our sidewalk!” in response to orders to disperse.

29. Exhibit BB is video served by plaintiff on March 11, 2015. The attached stills show plaintiff watching defendant Zielinski issue orders to disperse from a few feet away. Subsequently, the video shows plaintiff over eight minutes later, still refusing to disperse, and apparently talking on the phone while he observes the arrest of non-party Jose Mediavilla at approximately 08:48. This video shows, in high resolution, plaintiff’s deliberate defiance of lawful orders, and underscores that protestors who wanted to leave the area could do so.

Dated: New York, New York  
March 27, 2015

ZACHARY CARTER  
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By: /s/  
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TO:

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